

EXHIBIT “1”

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Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 1

1 ARBITRATION BEFORE
2 JUDICIAL ARBITRATION AND MEDIATION SERVICE
3
4 MARC J. RANDAZZA,)
5 Complainant,)
6 vs.) Ref. No. 1260002283
7 EXCELSIOR MEDIA)
8 CORPORATION, a Nevada)
9 corporation; LIBERTY)
10 MEDIA HOLDINGS, LLC, a)
11 California limited)
12 liability company; and)
13 JASON GIBSON,)
14 individually,)
15 Respondents.)
16

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13
14 TRANSCRIPT OF ARBITRATION PROCEEDINGS
15 VOLUME I
16 BEFORE THE HONORABLE STEPHEN E. HABERFELD
17 Taken on Monday, February 9, 2015
18 At 3800 Howard Hughes Parkway
19 Eleventh Floor
20 Las Vegas, Nevada
21
22
23
24

25 REPORTED BY: JO A. SCOTT, RPR, CCR NO. 669

Arbitration Proceedings ~ Volume I ~ February 9, 2015
 Marc J. Randazza vs. Excelsior Media Corporation

Page 2

1 APPEARANCES:

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12 Also Present:

13 MARC J. RANDAZZA

JASON GIBSON

14 BRIAN LOWDERMAN

BRIAN DUNLAP

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16

17

I N D E X

18 WITNESS

PAGE

19 MARC J. RANDAZZA

Direct Examination by Mr. White

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Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 10

1 MR. WHITE: That is correct, Your Honor.

2 ARBITRATOR HABERFELD: Okay.

3 Mr. Randazza, I would ask you please, before we

4 get started, would you kindly print your name and

5 business address, and then I'm going to ask you to

6 please stand after you've done that, face me --

7 or, actually, our court reporter, whom we have

8 present, and to be sworn as a witness.

9 MR. WHITE: Mr. Randazza will be doing
10 that by affirmation.

11 ARBITRATOR HABERFELD: That's fine.

12 And you know how to do that,

13 Ms. Reporter?

14 THE COURT REPORTER: Yes.

15 ARBITRATOR HABERFELD: Fine.

16 MR. WHITE: Where would you like

17 Mr. Randazza to sit?

18 ARBITRATOR HABERFELD: I think we spoke

19 with the court reporter, and I think she would

20 like the witness chair to be where Mr. Randazza is

21 presently sitting, all the better to see him.

22 MR. WHITE: Would you like me to move,

23 then?

24 ARBITRATOR HABERFELD: I think it's fine.

25 I think it would probably work the way you have

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 11

1 it, but what would work best for you, Mr. White?

2 MR. WHITE: It works for me, or at least

3 it does for the moment. If it seems that he's

4 looking -- it's difficult, then perhaps we'll find

5 a way to move around.

6 ARBITRATOR HABERFELD: Okay. Let's see

7 about that. We're good on that.

8 MS. KRINCEK: This chair is open, too.

9 MR. WHITE: Thank you.

10 ARBITRATOR HABERFELD: I would just ask,

11 Mr. Randazza, if you could, as much as you can,

12 although the questions will be coming from

13 Mr. White, who is to your right, and I am to your

14 left, and the court reporter is across from you,

15 to please try to be as much giving your testimony

16 to me and to the court reporter, rather than

17 looking to Mr. White, which would be making it

18 difficult to read your lips and to hear you

19 better.

20 MR. RANDAZZA: Okay.

21 ARBITRATOR HABERFELD: Fair enough?

22 MR. RANDAZZA: Sure.

23 ARBITRATOR HABERFELD: Okay. For

24 purposes of direct examination, and this is

25 applicable to all witnesses, just about anything

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 31

1 something like that, they couldn't just then
2 immediately fire me, keep the money, and pay me
3 the severance, and then I'm out.

4 Q. The next part says, Settlement fund
5 bonuses will vest at the time of settlement.

6 Do you see that?

7 A. I do.

8 Q. Is that something you also deliberately
9 negotiated?

10 A. I did.

11 Q. And the next sentence is, If
12 Mr. Randazza's employment terminates for any
13 reason by either party, Randazza will be entitled
14 to all vested settlement bonus amounts, regardless
15 of when they are collected.

16 Why would you negotiate a term like that?

17 A. Because I could also see that perhaps the
18 settlement funds wouldn't come in for a long time,
19 so I wanted to make sure that that was also
20 something clear, that if I was working for a
21 certain goal, I didn't want that goal to evaporate
22 simply because the relationship might not have
23 continued.

24 Q. Now, this doesn't explicitly say whether
25 that 25 percent is of gross or of net, does it?

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 32

1 That should be "or of net."

2 A. No, it doesn't make it -- it doesn't make
3 it clear.

4 Q. Did you have any discussions with
5 Mr. Gibson during the course of your work with
6 Excelsior about which one it was?

7 A. Yes. It was my understanding, and I
8 believe his understanding, that it was from the
9 gross. And, in fact, from the very first
10 settlement that came in, it was gross.

11 Q. Would you please turn to Exhibit 30 in
12 the binder before you?

13 A. Yes.

14 Q. And let me know when you have it and you
15 are ready to talk about what it is.

16 A. I am ready.

17 Q. Do you recognize what this is?

18 A. Yes. This is an e-mail exchange that
19 Jason and I had where we discussed whether it
20 would be net or gross.

21 And you can see the -- on the second page
22 of the exhibit, Jason began the discussion in
23 February of 2010, really bringing up the issue of,
24 you know, what would happen if possibly our
25 expenditures on a file wind up exceeding the

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 33

1 amount of the settlement, or making it that they
2 actually get nothing, but I still get my
3 25 percent. And I acknowledge that, you know, we
4 didn't even ponder that at the time.

5 However, I did offer to change the
6 agreement, if he wanted to, but I wanted to make
7 sure that the -- you know, that wasn't the only
8 equity that we took into consideration.

9 Q. Did you, in fact, change the agreement?

10 A. We did not. When I proposed, for
11 example, you know, I had -- I had in mind at that
12 time a settlement that we came to that, you know,
13 I was -- I was particularly disappointed in,
14 because we had gotten -- I don't remember the
15 exact amount, but we had gotten something like a
16 \$600,000 judgment against a trademark infringer,
17 cybersquatter, so that would have been a pretty
18 large bonus for me.

19 And Jason made the decision that he would
20 of rather -- he made the decision to settle for
21 something like, you know, \$30,000 and the transfer
22 of a domain name that I didn't think was
23 particularly worth all that much, but he was the
24 boss, so I did what he told me to do.

25 But there you can see, if they were going

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 34

1 to change the equities on net versus gross, maybe
2 we could put in some consideration for what
3 happens if we get a domain name that's worth a lot
4 of money, I don't know how I get a quarter of
5 that.

6 Jason and I discussed that in this
7 e-mail, and, you know, Jason decided at the end of
8 that, let's just keep it the way we've had it all
9 along.

10 Q. Let me ask you about that. On the first
11 page of the e-mail, the second to last
12 paragraph --

13 A. Yeah.

14 Q. -- in Mr. Gibson's last e-mail to you,
15 saying, So to keep things clean and simple, I'm
16 thinking maybe we should just continue under the
17 original agreement where we pay all expenses,
18 assume all risks, and I can freely hit the brakes
19 on the expenses and settle at will if I feel it
20 was the business's best interest?

21 A. Yes.

22 Q. Was that what you understood the
23 agreement continued to be after that exchange?

24 A. Yes. I think it couldn't be more clear.
25 We were -- it was going to be 25 percent of net,

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 55

1 A. I would often send them to him for his
2 approval. You know, sometimes he didn't want to
3 be bothered with it, but I thought that this one
4 was important to send to him.

5 Q. Now on the next page, I see the letter is
6 dated January 2011, and it's on the letterhead of
7 Randazza Legal Group?

8 A. Yes.

9 Q. Did you do many letters from Randazza
10 Legal Group?

11 A. When it came to litigation communications
12 or demand letters, it was almost exclusively on
13 RLG letterhead, although earlier in the beginning
14 we did have it on Liberty or Corbin Fisher
15 letterhead.

16 Q. Is there any particular strategy behind
17 doing that?

18 A. Yeah. You know, we wanted -- we wanted
19 the opposing parties to see that there was a law
20 firm behind the threats, not just a one-person
21 legal department. Wanted them to see that there
22 were multiple offices. And, also, I didn't
23 want -- I wanted them to see that there was a
24 level of separation between this and the company.

25 Q. Did Mr. Gibson or anyone else at

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 173

1 Q. All right. In this one, if you look at...

2 Exhibit 325, the first page --

3 A. Yes.

4 Q. -- towards the bottom.

5 A. Yes.

6 Q. There's a reference to \$75,000 in there.

7 A. Yep.

8 Q. And there's a notation, Who gets this?

9 A. Right.

10 Q. Who was, under this draft, at this time
11 supposed to get that?

12 A. That was supposed to go into Val Gurvits'
13 trust account under this agreement.

14 Q. But who was supposed to get it next, the
15 way you and Val had been negotiating it?

16 A. According to Val, he was then going to
17 transfer it to me.

18 Q. Was it your intention ever to actually
19 get it for yourself?

20 A. No.

21 Q. Did you explain that to Jason?

22 A. I did.

23 Q. So let's take a look -- it's inevitable
24 that we bounce around a lot, I guess -- at
25 Exhibit 66. That's in our second volume.

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 197

1 A. Oh, God, no.

2 Q. Did you threaten her, like things would
3 go badly for her in the industry?

4 A. No. In fact, I tried to -- you know, I
5 wanted her to come, but I was pretty clear that it
6 was going to be a huge pay cut, and, you know,
7 maybe not even any benefits to start off, but that
8 I would do my best to fix that.

9 Q. Okay.

10 A. The worst job offer I've ever seen.

11 Q. So aside from speaking with Ms. Dillon
12 about the possibility of joining you, did you take
13 any steps to secure your personal data?

14 A. Yes.

15 Q. Let's talk about the computers you used
16 when you were there. Did you have a laptop, a
17 company-issued laptop at this time?

18 A. Yeah, I had -- I had had two by this
19 time.

20 Q. The one you had at this point, what kind
21 of laptop was it?

22 A. It was a MacBook Air.

23 Q. And when you did Excelsior work on it,
24 did you store Excelsior documents long term on the
25 laptop?

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 206

1 Q. So what time did you -- does this show
2 you sending it?

3 A. At 3:10 p.m.

4 Q. And turning to the next one, what's the
5 time for Mr. Gibson's response?

6 A. 4:04 p.m.

7 Q. Do you recall where he was with respect
8 to where you were?

9 A. He was in Las Vegas.

10 Q. All right.

11 A. And I was on the East Coast. This is
12 printed from a different server. This is printed
13 from one that --

14 Q. Well, this one has the Respondents' Bates
15 stamp, correct?

16 A. Oh, yeah.

17 Q. EMC?

18 A. Yeah.

19 Q. And he says in here, he directs you to
20 counsel that he's hired, correct?

21 A. Uh-huh.

22 Q. Did you -- and he says your -- We
23 construe your e-mail as a resignation of your
24 employment and accept your resignation effective
25 immediately.

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 207

1 Do you see that?

2 A. I do.

3 Q. Did you respond to that promptly?

4 A. I did.

5 Q. And the very top e-mail on the page --

6 A. Yes.

7 Q. -- what did you say?

8 A. I wrote to Wendy and Patrick saying that
9 it wasn't a resignation, as much as Mr. Gibson
10 would like it to be so he can try and evade
11 payment of my severance.

12 Q. And looking at the second paragraph,
13 there is a reference to you being represented by
14 people --

15 A. Yes.

16 Q. -- in respect to this.

17 Had you already lined up the
18 representation before you got that response from
19 Mr. Gibson?

20 A. I had not.

21 Q. How did you get it together that quickly?

22 A. Well, Allan Rubin at Jackson Lewis is a
23 good friend of mine, as is Clyde DeWitt. So I
24 called Allan, because I knew that Allan and
25 Jackson Lewis specialized in employment law, and

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 242

1 A. Yes.

2 Q. -- about possibly brokering the sale and
3 who would get the percentage of what?

4 A. Uh-huh, yes.

5 Q. Did you understand during any of this
6 that that was actually ever going to amount to
7 anything?

8 A. This, like anything with Val Gurvits,
9 it's always very suspect. So, no, I did not
10 expect it would ever amount to anything except
11 perhaps Val telling TNAflix to up the amount of
12 settlement.

13 Q. Now, we talked about Megaupload and the
14 discussion in that case, as well?

15 A. Yes.

16 Q. Did you expect the negotiations there
17 with the opposing counsel to result in anything
18 actually going to you as opposed to Liberty?

19 A. No, I did not.

20 Q. You occasionally go as far as to
21 produce -- create documents kind of playing along
22 with the other side?

23 A. Yes.

24 Q. What was your ultimate purpose in doing
25 that?

Arbitration Proceedings ~ Volume I ~ February 9, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 243

1 A. To get the most I could in the settlement
2 that I was working on at the time.

3 Q. Let's talk about XVideos.

4 A. Yes.

5 Q. What was XVideos?

6 A. A tube site.

7 Q. Like the tube site you testified about
8 this morning?

9 A. Yes. Not just was, but is.

10 Q. Did you ever make a proposal to
11 Mr. Gibson about a joint effort against XVideos, a
12 joint suit against XVideos?

13 A. There was some discussion of that.

14 Q. Would you look at Exhibit 28, please?

15 A. All right. I'm there.

16 Q. Please let me know when you've reviewed
17 it and you recognize what it is?

18 A. I have reviewed it.

19 Q. Is this an e-mail from you to Mr. Gibson
20 about a proposed lawsuit against XVideos?

21 A. It is.

22 Q. And why at this time, January 2010, was a
23 lawsuit against XVideos feasible?

24 A. Well, Gill was going to do most of the
25 work, and so I -- I was relying in large part on

Arbitration Proceedings ~ Volume II ~ February 10, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 275

1 ARBITRATION BEFORE

2 JUDICIAL ARBITRATION AND MEDIATION SERVICE

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4 MARC J. RANDAZZA,)

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6 vs.) Ref. No. 1260002283

7 EXCELSIOR MEDIA)

CORPORATION, a Nevada)

8 corporation; LIBERTY)

MEDIA HOLDINGS, LLC, a)

9 California limited)

liability company; and)

10 JASON GIBSON,)

individually,)

11 Respondents.)

12)

13

14 TRANSCRIPT OF ARBITRATION PROCEEDINGS

15 VOLUME II

16 BEFORE THE HONORABLE STEPHEN E. HABERFELD

17 Taken on Tuesday, February 10, 2015

18 At 3800 Howard Hughes Parkway

19 Eleventh Floor

20 Las Vegas, Nevada

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25 REPORTED BY: JO A. SCOTT, RPR, CCR NO. 669

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Arbitration Proceedings ~ Volume II ~ February 10, 2015
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Page 276

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I N D E X

18 WITNESS

PAGE

19 MARC J. RANDAZZA

20 Cont. Direct Examination by Mr. White 277

21 Cross-Examination by Ms. Krincek 298

22

23

24

25

26

Arbitration Proceedings ~ Volume II ~ February 10, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 377

1 Oron.

2 Q. I'm sorry. TNAFlix.

3 A. Correct.

4 Q. And did you draft this agreement,

5 Mr. Randazza?

6 A. I don't recall if I was the author of it.

7 Q. So you forwarded to -- you did forward it

8 to Mr. Gurvits?

9 A. It looks that way, yes.

10 Q. Under recitals, it says, Whereas, RLG has

11 indicated that it is aware of certain prospective

12 buyers who may be interested in purchasing the

13 assets or stock of the company, correct?

14 A. Yes.

15 Q. And then do you see under the Commission

16 section, Number 2, is providing for you and

17 Mr. Gurvits to split a ten percent commission on

18 the sale of Youngtek, correct?

19 A. I do.

20 Q. This is a lot of work you are going

21 through just to thwart your allusive being a

22 broker and taking a bribe, when the settlement of

23 TNAFlix has already been accomplished; don't you

24 think?

25 A. Doesn't look like a lot of work to me.

Arbitration Proceedings ~ Volume II ~ February 10, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 397

1 Do you see that?

2 A. I do.

3 Q. And then you attach to Mr. Lieberman's

4 e-mail a retainer agreement between yourself and

5 Oron, correct?

6 A. Yes, yes.

7 Q. Now, on the TNAFlix matter, you never got

8 your retaining agreement signed after the

9 settlement agreement was finalized, correct?

10 A. Correct.

11 Q. So here you are sending out your

12 retaining agreement before you've gotten to the

13 point of having a settlement agreement about the

14 600 or \$650,000 drafted with Mr. Lieberman,

15 correct?

16 A. Yes. Direct your attention to

17 Paragraph C.

18 Q. But it's correct that you haven't gotten

19 to the point where you've exchanged settlement

20 agreements about the 600, \$650,000 that you've

21 been e-mailing about with Mr. Lieberman, correct?

22 A. No. We had a settlement already at this

23 point, as far as I was concerned.

24 Q. And now you are negotiating in the past

25 e-mails that we have looked at for more money to

Arbitration Proceedings ~ Volume II ~ February 10, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 421

1 Q. What conversations had occurred?

2 A. That if it were paid, that he -- that he
3 had offered to, quote, unquote, bribe me again,
4 and that if it were paid to me as fees, I couldn't
5 put it in the pot. Jason said, Well, I would
6 think that every dollar that comes in belongs to
7 the company. None of it belongs to you.

8 Which is why Val and I were discussing
9 let's just make it a settlement agreement with me,
10 that way if I get a settlement, that can be -- I
11 can do whatever I want with that. But I can't
12 share fees with a nonlawyer.

13 Ultimately the math on this worked out to
14 it would change my bonus by, you know, \$31,000, so
15 didn't ultimately matter.

16 Q. Mr. Randazza, the communication that you
17 are just talking about with Jason about if it's
18 fees, it can't be paid to you --

19 A. Yeah.

20 Q. -- that's the August 13th, 2012,
21 communication, correct?

22 A. That's the e-mail, but that's not the
23 conversation. I don't have a recording of the
24 conversation I had with Jason.

25 Q. So it's your testimony today that you had

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 574

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18 VOLUME III
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20 Taken on Wednesday, February 11, 2015
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Arbitration Proceedings ~ Volume III ~ February 11, 2015
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Page 575

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Arbitration Proceedings ~ Volume III ~ February 11, 2015

Marc J. Randazza vs. Excelsior Media Corporation

Page 576

1

I N D E X

2

WITNESS

PAGE

3

MARC J. RANDAZZA

Cont. Cross-Examination by Ms. Krincek 577

4

Redirect Examination by Mr. White 613

5

RONALD D. GREEN, JR.

Direct Examination by Mr. Whitehead 638

6

Cross-Examination by Mr. Thomas 647

7

JASON GIBSON

Direct Examination by Ms. Krincek 659

8

Cross-Examination by Mr. White 776

Redirect Examination by Ms. Krincek 839

9

BRIAN FLOYD LOWDERMAN

10 Direct Examination by Ms. Krincek 840

Cross-Examination by Mr. Whitehead 848

11 Redirect Examination by Ms. Krincek 852

Furt. Cross-Examination by Mr. Whitehead 853

12

BRIAN DUNLAP

13 Direct Examination by Ms. Krincek 855

14

15

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Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 618

1 A. I did know it had a policy.

2 Q. Why didn't you use the procedures set
3 forth in the policy?

4 A. Can you be more specific?

5 Q. Well, why didn't you go through the
6 complaint procedure specified in Excelsior's
7 harassment policy?

8 A. Which time?

9 Q. After the film?

10 A. Well, I went directly to the CEO instead.
11 I thought that was the more appropriate way to do
12 it.

13 Q. And the second time, after the car
14 incident?

15 A. Given the way that Jason had treated me
16 on the first incident, I didn't see there being
17 any sense in it, and I was reasonably sure that I
18 would be summarily fired at that point.

19 Q. You were asked some questions about the
20 TNAFlix negotiations.

21 Do you recall that?

22 A. Yes.

23 Q. And specifically Ms. Krincek showed you
24 some of the e-mails and agreements in which you
25 went back and forth with the lawyer on the other

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 628

1 Q. Did you do a formal waiver or formal
2 disclosure?

3 A. I did not.

4 Q. Did you, in fact, brag about how your
5 relationship with them as their lawyer helped you
6 get things?

7 A. Yes, including that they would do active
8 suppression.

9 Q. Late in the afternoon yesterday, you
10 speculated that you might have been the DMCA agent
11 for XVideos.

12 Is that true?

13 A. No. I -- in fact, I checked my records
14 last night, and there's no truth to that at all.

15 Q. Why would you say such a thing?

16 A. As you probably saw from my outburst at
17 the end of the day, I was exhausted and looking at
18 very small print on a page, and looking at that, I
19 got confused.

20 Q. How was it handled when something was up
21 on XVideos that was Liberty's content?

22 A. If someone had uploaded content to
23 XVideos, normally XVideos would suppress it before
24 anything even happened.

25 But then there would be -- if someone

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 629

1 sent them a DMCA notice, they would go and take
2 the materials down. But if that notice was at any
3 point elevated to me, I would send it, either
4 myself or through one of the other RLG attorneys,
5 to the CEO of the company and ask him to deal with
6 it directly.

7 Q. Ms. Krincek showed you an e-mail in which
8 you sent direction to Jason Fischer to report a
9 link to XVideos. Is that representative of how
10 you would do it?

11 A. That was typical, although sometimes I
12 would check the link to make sure it was active
13 before doing so.

14 Q. What do you mean to check if it was
15 active?

16 A. Well, a lot of the reports that came
17 in -- in fact, the vast majority of them, by the
18 time they were reported, XVideos had already
19 suppressed the video proactively. So I would
20 click it, and it would go to a dead link.

21 Q. Let me ask you about the day when you
22 sent the e-mail to Mr. Gibson, and he sent one
23 back saying that We accept your resignation.

24 Do you have that day in mind?

25 A. I do.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 632

1 disagreed, that he didn't want to offend possibly
2 right wing fans of the -- of the site, so he said
3 I can do it under my own flag, but not under
4 Corbin Fisher's flag.

5 Q. Did you do the Righthaven litigation
6 under Corbin Fisher's flag?

7 A. I did not.

8 Q. You were asked --

9 A. And I can be clear. Some of the
10 Righthaven litigation was pro bono and some was
11 paid.

12 Q. Do you remember being asked about the
13 amount of hours you worked various months for
14 outside clients?

15 A. I do.

16 Q. In the course of your career, let's say
17 starting at the firm you were at before you joined
18 Excelsior, how many hours a month are you
19 accustomed to working?

20 A. When I was there, at least -- at least
21 250. Sometimes I would even have 300 hour months.

22 Q. Was it unusual for you to work between
23 250 and 300 hours a month?

24 A. I mean, those would be big months, but,
25 no, it wasn't unusual at all.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 633

1 Q. Was it unusual for that to happen, also,
2 by the time you were working for Excelsior, when
3 you combined your Excelsior work and the outside
4 work?

5 A. No, that wasn't unusual. In fact, I
6 think I averaged about -- I don't know. I mean, I
7 averaged over 200 a month combined.

8 Q. Do you recall being asked with respect to
9 Mr. Grady -- and I apologize for jumping around a
10 little bit -- if you understood what digging
11 behind domains for proxy meant?

12 A. I do recall that.

13 Q. Do you understand what that phrase means?

14 A. The entire phrase, no.

15 Q. What is domains by proxy?

16 A. That I know. That's a service that
17 Go Daddy, which is a domain name registrar,
18 provides to its customers. So you can pay
19 Go Daddy, I think it's an extra dollar a year, and
20 they will list domains by proxy as the registrant
21 of the domain name itself for your -- that you've
22 registered, and not list you, unless they get
23 something like, you know, if they get a
24 threatening letter, they will usually give up that
25 information.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 658

1 agreement, now going to ask Ms. Krincek on behalf
2 of Respondents to take over her part of the case
3 to move us through until we resume claimant's
4 case; is that correct?

5 MS. KRINCEK: Correct.

6 ARBITRATOR HABERFELD: Let's look to you.
7 Who is our next witness, please?

8 MS. KRINCEK: The respondent calls Jason
9 Gibson.

10 ARBITRATOR HABERFELD: Mr. Gibson, can I
11 ask you, please, since we haven't done this at
12 this point, to kindly complete on that form your
13 name and business address for the record?

14 MR. GIBSON: Okay.

15 ARBITRATOR HABERFELD: I'll put that
16 along with Mr. Randazza's and Mr. Green's
17 recordkeeping.

18 While you are doing that, I'll just
19 remind that, as we've done with prior witnesses,
20 upon completion of that, if you would kindly
21 stand, face the court reporter, and raise your
22 right hand to be sworn as a witness.

23 MR. GIBSON: Okay. So just name and
24 address?

25 ARBITRATOR HABERFELD: Name and business

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 659

1 address will be fine.

2 MR. GIBSON: Okay.

3 ARBITRATOR HABERFELD: I'll take that.

4 And kindly stand, face the reporter, please.

5 Whereupon --

6 JASON GIBSON,
7 having been first duly sworn to testify to the
8 truth, the whole truth and nothing but the truth,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. KRINCEK:

12 Q. Mr. Gibson, can you state your name for
13 the record?

14 A. Jason Gibson.

15 Q. And what is your position with Excelsior
16 Media Company?

17 A. I am the CEO and co-founder.

18 Q. Could you, Mr. Gibson, tell us a little
19 bit about your educational background?

20 A. I attended the University of Missouri,
21 Rolla for about two and a half years, studying
22 mechanical engineering, and finished my degree in
23 management human resources at Park University in
24 Kansas City. Actually Parkville, Missouri.

25 Q. So your undergraduate degree is in human

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 675

1 head up our anti-piracy efforts and command the
2 offensive we are preparing to take against those
3 stealing our consent, seeking out the infringers
4 ~~and their real identity, initiating legal action~~
5 against them, pursuing judgment, and firmly,
6 loudly, and forcefully sending the message that
7 violating our intellectual property rights can and
8 will result in major consequences for the
9 violators.

10 Q. Does that accurately reflect the
11 company's intended role for Mr. Randazza?

12 A. Yes.

13 Q. And did Mr. Randazza ever take issue with
14 that characterization?

15 A. No, he did not.

16 Q. Now, Mr. Randazza testified that the vast
17 majority of work he did for the company was for
18 Liberty Media.

19 Do you agree with that assertion?

20 A. Yes.

21 Q. Mr. Randazza testified that he was not
22 counseled about work not getting done for the
23 company in a timely manner -- let me strike that
24 and start over.

25 Mr. Randazza testified that he was not

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 676

1 counseled about not getting work done in a timely
2 manner, despite spending time working for other
3 clients.

4 Do you recall that testimony?

5 A. Yes. Yes, I do.

6 Q. Now, if Mr. Randazza was not providing
7 timely service, did you believe it to be because
8 he was doing work for other clients?

9 A. No. We would have no way of knowing,
10 really, because when he first started working with
11 us, he worked out in the San Diego office.

12 Probably a year and a half there was really no
13 supervision out in the office. He was the only, I
14 think, executive team member there, so there was
15 really no way to know one way or the other, so --

16 Q. You're aware that Mr. Randazza is
17 claiming that you harassed him because he's a
18 straight male, correct?

19 A. Yes, I am.

20 Q. Do you care what his sexual orientation
21 is?

22 A. No.

23 Q. Your co-owner Brian Lowderman, what is
24 his sexual orientation?

25 A. He is straight.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 731

1 BY MS. KRINCEK:

2 Q. Dudevu, what kind of site was that?

3 A. There might have been one called

4 PornoLove or something like that.

5 I'm sorry, what?

6 Q. Dudevu, what kind of -- was that a tube
7 site or file locker?

8 A. Yes, a tube site.

9 Q. It's a tube site?

10 A. Yes.

11 Q. Do you recall what the company's recovery
12 on Dudevu was?

13 A. I believe it was around 60 or \$75,000.

14 Q. How about Hotfile, what was the company's
15 recovery on Hotfile?

16 A. I believe 275, 275,000.

17 Q. What about Megaupload?

18 A. It was around 600,000.

19 Q. How about TNAFlix, that was --

20 A. These are estimates. I don't -- I don't
21 have the exact --

22 Q. Got it.

23 How about TNAFlix, that's a tube site,
24 correct?

25 A. Yes.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 732

1 Q. And that was a \$50,000 settlement,
2 correct?

3 A. Correct, yes.

4 Q. Did Mr. Randazza ever say he was XNXX's
5 lawyer?

6 A. No.

7 Q. We heard some testimony about technology
8 known as Vobile to electronically fingerprint
9 content so it could be identified and removed when
10 posted illegally to participating sites.

11 Who signed the company up with Vobile?

12 A. Marc did. In fact, he even -- it was --
13 he unilaterally signed us up for it and paid for
14 it.

15 Q. Mr. Randazza testified that Vobile
16 flopped. What was your opinion of Vobile?

17 A. It was a disaster. It put the onus on
18 the producer to, you know, basically do the
19 legwork and all the effort to keep the content off
20 of the tube sites, and it -- it was obviously, in
21 his own words, a flop. It was -- that was
22 apparent pretty quick, so --

23 Q. Are you familiar with an entity known as
24 XVideos?

25 A. Yes.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 734

1 A. There is a couple other tube sites, as
2 well; GLBT, I think it's all gay, and Gayfort, as
3 well.

4 Q. Those are additional tube sites --

5 A. Uh-huh.

6 Q. -- and did Mr. -- all the tube sites that
7 you mentioned, did Mr. Randazza recommend taking
8 legal action against them?

9 A. Yes, he did.

10 Q. Exhibit 390 is the e-mail from Marc
11 Randazza with a subject, Fair Use Warning, that's
12 dated September 6th, 2011, where he's advising
13 some of -- yourself and other team members not to
14 send a takedown notice to XVideos.

15 Do you recall looking at that exhibit?

16 A. Yeah, I've seen this exhibit. Now, the
17 e-mail address it was sent to, it's a joint e-mail
18 address that my business partner and I share, so
19 whether I read that on that day or not, I don't
20 know, but --

21 Q. But you were aware that Mr. Randazza was
22 providing legal advice to the company about
23 XVideos?

24 A. Yes.

25 Q. To your knowledge, did Mr. Randazza ever

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 735

1 take legal action against XVideos on behalf of the
2 company?

3 A. He did not.

4 Q. Do you recall that you told Mr. Randazza
5 that you wanted to go after XVideos?

6 A. I explicitly told him in an e-mail that I
7 wanted him to sue XVideos.

8 Q. And to your recollection, was that after
9 June 19th of 2010, when they became a client of
10 Mr. Randazza's?

11 A. Yes.

12 Q. To your knowledge, did he take any action
13 in response?

14 A. No.

15 Q. At any time during his employment, did
16 Mr. Randazza ever advise you verbally or in
17 writing that XVideos was his client?

18 A. No, he did not.

19 Q. Mr. Randazza has given some testimony
20 about bragging, I guess, about XVideos and access
21 to XVideos.

22 Did you ever have any understanding from
23 any sort of bragging that that meant that whatever
24 entity he was talking about was a client of his?

25 A. No. Marc brags a lot about a lot of

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 736

1 things. No.

2 Q. At any time during his employment, did
3 Mr. Randazza ever advise you verbally or in
4 writing that XVideos was his client, and they paid
5 him \$35,000?

6 A. No.

7 Q. Did he ever seek the company's consent to
8 represent XVideos?

9 A. No, he did not.

10 Q. Mr. Randazza claimed one of the reasons
11 XVideos was not a tube site that should be sued is
12 that it was located offshore.

13 Had Mr. Randazza chosen for the company
14 other offshore companies to sue?

15 A. Many. I think virtually every one of
16 those that I named earlier were all offshore.
17 Most, if not all of them are.

18 Q. While Mr. Randazza was employed, the
19 company did not sue XVideos or XNXX, correct?

20 A. That's correct.

21 Q. Why not?

22 A. Say that again.

23 Q. Why not? Why didn't the company sue
24 XVideos or XNXX, even though your material was
25 being found on --

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 737

1 A. We were -- Marc -- Marc is the person
2 that would identify litigation targets for us.

3 Q. Did you rely upon him to identify
4 targets --

5 A. Yes.

6 Q. -- and advise which ones to take action
7 against?

8 A. Yes, absolutely. Absolutely.

9 And he would also be the one that would,
10 you know, lay out dollar amounts that, you know,
11 were target amounts.

12 Q. During Mr. Randazza's employment, did the
13 company acquire the domain gay.xxx?

14 A. Yes, we did.

15 Q. Have you ever heard of an entity Titan
16 Media?

17 A. Yes. They are an adult content producer.

18 Q. And how about have you heard of Kink.com?

19 A. They are another adult content producer.

20 Q. Did Mr. Randazza ever disclose to the
21 company that Titan Media was a client of his?

22 A. No, he did not.

23 Q. Did he ever disclose to the company that
24 Kink.com was a client of his?

25 A. No, he did not.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 749

1 A. Uh-huh.

2 Q. And his response was, Don't ask?

3 A. Don't ask.

4 Q. Did Oron ever attempt to use allegations
5 that the company used a hacker against the
6 company --

7 A. Yes.

8 Q. -- against Liberty Media?

9 A. Yes.

10 Q. Where do they do that; do you recall?

11 A. I believe it was in the arbitration
12 demand that they filed.

13 Q. Mr. Randazza represented the company in a
14 dispute against Megaupload in 2011; is that
15 correct?

16 A. That's correct.

17 Q. Did Mr. Randazza ever disclose to you
18 that part of his negotiations with Megaupload
19 included his representation that he was interested
20 in being retained by Megaupload after the matter
21 was concluded?

22 A. No, he did not.

23 Q. Did he tell you that opposing counsel
24 tried to bribe him?

25 A. Yes, that -- that was Ira Rothken, I

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 750

1 believe was the attorney's name. And apparently
2 he said something, it was \$5,000 or something, and
3 he seemed very put off and upset, and called Ira
4 an unethical piece of shit. He was actually very
5 hostile towards Ira. I don't think he liked him
6 very well.

7 Q. I'm going to move to a different topic
8 now, public relations for the company.

9 Was some level of publicity to the
10 company's anti-piracy efforts desirable --

11 A. Yes.

12 Q. -- to the company?

13 A. Yes.

14 Q. Was there a limit to how much press you
15 wanted to get on that?

16 A. Of course.

17 Q. Did you ever authorize Mr. Randazza to
18 unilaterally decide what information was provided
19 to the press regarding the company?

20 A. Never.

21 Q. Can you turn to Exhibit 320?

22 Exhibit 320 is an e-mail exchange between
23 yourself and Mr. Randazza from November of 2011.
24 Can you tell us about what happened that prompted
25 this e-mail string?

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 772

1 Q. Are you seeking disgorgement of
2 Mr. Randazza's salary for the time period he
3 represented XVideos and XNXX?

4 A. Yes.

5 Q. And the retainer agreements with XVideos
6 and XNXX was entered in June 2010; is that
7 correct?

8 A. That's correct.

9 Q. Are you seeking an award of fees and
10 costs in this matter?

11 A. Yes, we are.

12 Q. Are you seeking reimbursement for the
13 costs of the forensic examination of
14 Mr. Randazza's laptop that was wiped?

15 A. Yes, we are.

16 Q. Are you seeking the return of the second
17 company laptop that Mr. Randazza testified he had,
18 and has not returned to the company?

19 A. Yes, we are.

20 Q. Are you requesting that Mr. Randazza be
21 required to turn over the company's funds he's
22 holding in his trust account since August 2012
23 that is disputed funds?

24 A. Yes, we are.

25 Q. Do you believe the amount that

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 773

1 Mr. Randazza is holding in his trust account to be
2 in excess of \$275,000?

3 A. Yes, we do.

4 Q. Are you asking for a third-party audit of
5 Mr. Randazza's trust account to be ordered so the
6 company can determine whether all monies have been
7 submitted to it?

8 A. Yes, we are.

9 Q. Are you unsure whether Mr. Randazza has
10 continued to receive settlement payments for the
11 company since his termination?

12 A. Yes, we are.

13 Q. Why is that?

14 A. There were a number of pay-over-time
15 settlements that were -- agreements that were
16 entered into while Marc was employed with us that
17 we don't know the status. And those amounts were
18 all paid directly to Marc.

19 Q. So do you have knowledge of whether or
20 not installment settlement payments have continued
21 to come in to Mr. Randazza since his termination?

22 A. We don't know for sure. We suspect,
23 because there were a number of them, so we don't
24 know the status of them.

25 Q. And the installment -- the people making

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 774

1 the installment payments, where would they direct
2 their payments to?

3 A. To Marc at Randazza Legal Group, I guess.

4 Q. The last thing I just wanted to ask you
5 about was in Mr. Randazza's testimony, he
6 referenced there being some change to an e-mail
7 system for the company in the spring of 2012?

8 A. Yes.

9 Q. And I think the implication was that
10 after that, he did not use Apple -- the Apple
11 e-mail system.

12 A. Yeah, that is hogwash. Nothing happened
13 to the company e-mail system in the spring. He
14 religiously used Apple mail. In fact, he made it
15 clear that he couldn't do his job using a Web
16 interface deal. So the Apple mail client would
17 have stored e-mails and documents locally to his
18 laptop, whereas the Web interface wouldn't. So,
19 yes, there was no change to the e-mail server.

20 Q. Do you believe had Mr. Randazza not wiped
21 his laptop, that there would be evidence of e-mail
22 communications from, for example, his Randazza
23 Legal Group e-mail address to other clients?

24 A. We're -- we're pretty confident, yes.

25 MS. KRINCEK: No further questions.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 801

1 Q. Well, you looked at a lot of e-mails
2 preparing for this arbitration, right?

3 A. I have, yes.

4 Q. You looked at a lot of e-mails preparing
5 for your deposition?

6 A. Yes.

7 Q. And you haven't seen any e-mails from you
8 counseling him for not getting work done in a
9 timely fashion?

10 A. That doesn't mean they don't exist, but I
11 haven't seen them. Sorry.

12 Q. So e-mails that we may not have here
13 might still exist; is that right?

14 A. No. I'm saying that I didn't see every
15 e-mail. There was 100,000 pages of documents that
16 you -- that were dumped on us.

17 Q. Okay.

18 A. So I can't testify that I read every
19 single one of them.

20 Q. So you haven't read all the e-mails that
21 are in the production, correct?

22 A. Correct.

23 Q. Now, you testified that Mr. Randazza
24 never gave you any written notice of any sort
25 about his representation of, for instance,

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 821

1 expenses that were being run up by the legal
2 department, yes. It was -- it was very expensive
3 without -- we weren't winning any lawsuits of note
4 that year. And, yes, it was a financial burden on
5 the company.

6 Q. Now, and you said several times that you
7 thought the company should focus instead on DMCA
8 takedowns and other methods of getting things
9 taken down, correct?

10 A. I have said that over -- over the years,
11 yes.

12 Q. Now, you haven't sued, for instance,
13 XVideos since Mr. Randazza left, correct?

14 A. Correct.

15 Q. You haven't sued XNXX, if I have that
16 right, since Mr. Randazza left?

17 A. Not yet, correct.

18 Q. Do you recall the large sheets of e-mails
19 that Ms. Krincek showed to Mr. Randazza --

20 A. Yes.

21 Q. -- of alerts about those?

22 A. Yes.

23 Q. Those went from -- everywhere from 2010
24 to 2012, correct?

25 A. Yes.

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 832

1 other than looking at their books. You can't just
2 run a -- there's various services online that
3 purport to give the value of a domain name, but
4 they're wildly inaccurate.

5 Q. Do you have any basis to assign any
6 particular value to the Fapzap.com domain name?

7 A. No, I don't.

8 Q. Mr. Randazza's litigation efforts did
9 some years, or at least one year, turn a profit,
10 correct?

11 A. We don't know.

12 Q. Didn't you once say in an e-mail to him
13 that it had, the year before, turned a profit?

14 A. We don't know the exact costs that we
15 were spending versus what we were bringing in. We
16 were trying to get that on a case-by-case basis to
17 get the ROI, and we never got that. That was
18 actually the purpose of the August 17th, 2012
19 meeting, or one of the purposes.

20 Q. And other than that, you did not ever
21 assess that he had made a profit for you?

22 A. We feel that we had lost money with him.
23 As best we can tell with the records that we have,
24 we've lost money. We're in the hole.

25 Q. You described the circumstances of

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 833

1 Mr. Randazza agreeing to advance \$25,000 to Hong

2 Kong, correct?

3 A. Yes.

4 Q. And you were the one who suggested it,

5 right?

6 A. The --

7 Q. That he --

8 A. Splitting the -- he was the one that
9 suggested the Mareva injunction, said it would be
10 \$50,000. And Brian and I were sitting in the
11 meeting, and we were -- we're not willing to go
12 \$50,000. So we offered \$25,000,
13 dollar-for-dollar, up to 50,000. He said yes.

14 Q. He suggested that the Mareva injunction
15 would be valuable for leverage over Oron, correct?

16 A. To get more money from them, yes.

17 Q. And after you obtained the Mareva
18 injunction in Hong Kong was when Oron signed the
19 agreement for \$550,000, correct?

20 A. Yes, it was more leverage.

21 Q. So what --

22 A. Wait. I wasn't disputing that it wasn't
23 leverage. It was leverage. It was whether or not
24 the amount -- we were juggling whether the \$50,000
25 was going to pay off or not, so --

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 837

1 BY MR. WHITE:

2 Q. All right. Mr. Gibson, do you recall
3 testifying how the company took a public relations
4 hit after the so-called "thieving little shits"
5 e-mail?

6 A. Yes.

7 Q. You said in your deposition that you've
8 never attempted to quantify business loss
9 resulting from that, correct?

10 A. Correct.

11 Q. You pointed to Mr. Randazza's e-mail
12 applying -- discussing fair use in the context of
13 an XVideos link, correct?

14 A. Yes.

15 Q. You don't have any basis to think that
16 the advice in the e-mail is legally incorrect, do
17 you?

18 A. I wouldn't know. I guess that's a no.

19 Q. You have lawyers outside now to advise
20 you on DMCA matters, correct?

21 A. Yes.

22 Q. And you are not aware of any changes that
23 your company has made in its approach to the DMCA
24 since Mr. Randazza left, correct?

25 A. I'm not going to discuss the advice that

Arbitration Proceedings ~ Volume III ~ February 11, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 838

1 our attorneys have given us.

2 Q. I'm not going to ask you to, sir.

3 My question is: Has your company changed

4 ~~its approach to DMCA takedown notices since~~

5 Mr. Randazza left?

6 MS. KRINCEK: I'm going to object. I

7 think that is vague and ambiguous. I'm not -- are

8 you talking about --

9 ARBITRATOR HABERFELD: Over -- overruled

10 on that.

11 THE WITNESS: I'm not --

12 ARBITRATOR HABERFELD: Do you have

13 knowledge or recollection as to whether there has

14 been any change in policy since the departure?

15 THE WITNESS: I don't recall any.

16 BY MR. WHITE:

17 Q. And you don't recall any changes in

18 policy with respect to how to check whether a

19 challenged link might be fair use, correct?

20 A. I don't -- I don't recall that. I don't

21 know.

22 MR. WHITE: Thank you, sir.

23 I don't have any more questions, Your

24 Honor.

25 ARBITRATOR HABERFELD: Redirect?

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 890

1 ARBITRATION BEFORE

2 JUDICIAL ARBITRATION AND MEDIATION SERVICE

3

4 MARC J. RANDAZZA,)

5 Complainant,)

6 vs.) Ref. No. 1260002283

7 EXCELSIOR MEDIA)

8 CORPORATION, a Nevada)

9 corporation; LIBERTY)

10 MEDIA HOLDINGS, LLC, a)

11 California limited)

12 liability company; and)

13 JASON GIBSON,)

14 individually,)

15 Respondents.)

16)

17)

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14 TRANSCRIPT OF ARBITRATION PROCEEDINGS

15 VOLUME IV

16 BEFORE THE HONORABLE STEPHEN E. HABERFELD

17 Taken on Thursday, February 12, 2015

18 At 3800 Howard Hughes Parkway

19 Eleventh Floor

20 Las Vegas, Nevada

21

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25 REPORTED BY: JO A. SCOTT, RPR, CCR NO. 669

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 891

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12 Also Present:

13 MARC J. RANDAZZA
JASON GIBSON
14 BRIAN LOWDERMAN
BRIAN DUNLAP
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Arbitration Proceedings ~ Volume IV ~ February 12, 2015
 Marc J. Randazza vs. Excelsior Media Corporation

Page 892

1	I N D E X	
2	WITNESS	PAGE
3	BRIAN DUNLAP	
	Cross-Examination by Mr. White	893
4	Redirect Examination by Ms. Krincek	913
5	ROBERT KIRK ADDISON	
	Direct Examination by Ms. Krincek	915
6	Cross-Examination by Mr. Whitehead	920
7	CARI PIPER	
	Direct Examination by Mr. White	923
8	Cross-Examination by Mr. Thomas	937
	Redirect Examination by Mr. White	946
9	ROBERT KIRK ADDISON	
10	Rebuttal Examination by Ms. Krincek	949
11	CHAZ VORRIAS	
	Direct Examination by Mr. Thomas	952
12	Cross-Examination by Mr. White	962
13	MICHAEL HOLPUCH	
	Direct Examination by Mr. Thomas	968
14	Cross-Examination by Mr. White	989
15	DENNIS L. KENNEDY, ESQ.	
	Direct Examination by Ms. Krincek	993
16	Cross-Examination by Mr. White	1062
	Redirect Examination by Ms. Krincek	1100
17		
18		
19		
20		
21		
22		
23		
24		
25		

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 958

1 A. I did.

2 Q. What was the extent of your contact?

3 A. I couldn't quote you exactly what I said,

4 but it went along the lines of, Hey, we had an

5 idea of filming in your office today, which Marc

6 and I had discussed in the past before, and he's

7 made several offers to please film in my office,

8 please film in my home, whether it had been in

9 San Diego, in Las Vegas. Any home he's ever had,

10 he's made that offer to us.

11 So I had the idea, We should do an office

12 scene today. I texted him, I said, Would you be

13 okay if we filmed an office scene? And he said,

14 Yes, absolutely.

15 Q. Did he seem upset by the fact that you

16 were going to film in his office?

17 A. No. He was actually -- he seemed pretty

18 excited about it.

19 Q. But the extent of your contact with him

20 was a text message -- it was a text message

21 exchange, correct?

22 A. Correct, text.

23 Q. Did you think he was going to have any

24 objection to you filming in his office?

25 A. I didn't get that impression at all.

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 963

1 answers to each question without in any way

2 anticipating, arguing, explaining, or giving a

3 narrative.

4 THE WITNESS: Understood.

5 ARBITRATOR HABERFELD: Are you okay with

6 that?

7 THE WITNESS: Yes.

8 ARBITRATOR HABERFELD: Any questions

9 about it?

10 THE WITNESS: No.

11 ARBITRATOR HABERFELD: Okay. Let's go

12 ahead, Mr. White.

13 BY MR. WHITE:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. The film in Mr. Randazza's office was in

17 April 2012, correct?

18 A. Correct.

19 Q. Now, you knew that Mr. Randazza left

20 Excelsior in August of 2012?

21 A. I believe so. I don't recall the exact

22 date he left.

23 Q. And you knew that there was controversy

24 surrounding his leaving, correct?

25 A. I did.

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 964

1 Q. You knew there was a dispute between him
2 and Excelsior, correct?

3 A. Correct.

4 Q. In fact, you knew in 2012 that one of the
5 disputes was about that scene filmed on his desk,
6 correct?

7 A. I wasn't aware that was a dispute until
8 further down the road, much further.

9 Q. How much further?

10 A. Until I was maybe -- maybe couple months
11 ago that I was told that he was questioning the
12 scene filmed in his office.

13 Q. So was it a secret that you were the one
14 who filmed the scene in his office?

15 A. No. It's all -- we -- it's never a
16 secret who films what.

17 Q. So Excelsior knew in 2012 that you had
18 filmed the scene in his office?

19 A. They would have, yes.

20 Q. Did they come to you and ask you in 2012
21 whether you had asked his permission?

22 A. I believe they did, just out of
23 curiosity, if I asked Marc, just to make sure it
24 was okay. It wasn't whether it was in dispute or
25 not. They just asked me, Did you make sure it was

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 965

1 okay with Marc? And I said yes.

2 Q. Did you tell -- so you told them in 2012
3 that it was okay with Marc?

4 A. Yes.

5 Q. Did you look for your text message in
6 2012?

7 A. Not that I recall.

8 Q. Did they ask you to look for your text
9 messages in 2012?

10 A. Not that I can recall.

11 Q. But you told them that he had said it was
12 okay by text, right?

13 A. I did.

14 Q. Whose job is it to get the permission of
15 the person whose office is being filmed in?

16 A. Either director or Aaron Anderson.

17 Q. So who was the director here?

18 A. I was the director.

19 Q. So it would be generally either your
20 responsibility or Aaron's responsibility?

21 A. Correct.

22 Q. Was it Mr. Gibson's responsibility?

23 A. No.

24 Q. Was there any reason that you know of for
25 Mr. Gibson to seek separate approval?

Arbitration Proceedings ~ Volume IV ~ February 12, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 987

1 A. The files are stored using like -- they
2 are temporary or cache identifiers, so the file
3 names have been changed. But within the database
4 on the cache, we can see that or what the original
5 files and folder paths were, and so from that we
6 were able to restore them.

7 Q. And so were you able to restore some of
8 the Jungle Disk files in this case?

9 A. Yes, we were.

10 Q. How many were you able to restore?

11 A. You know, I'll have to look again. It
12 was quite --

13 Q. I think Page 11 talks about it.

14 A. -- quite a few.

15 Approximately 19,000 files.

16 Q. Now, just a couple more final questions.

17 So even though you were able to restore
18 these Jungle Disk files, those were recoverable,
19 but if there were files or data that was deleted
20 from either of the devices, and that specific file
21 had not been saved into the Jungle Disk, would
22 there be any way to recover those files?

23 A. No, there would not have been.

24 Q. And there's no way to tell exactly what
25 was deleted and then subsequently wiped, correct?

Arbitration Proceedings ~ Volume V ~ February 13, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 1106

1 ARBITRATION BEFORE

2 JUDICIAL ARBITRATION AND MEDIATION SERVICE

3

4 MARC J. RANDAZZA,)

5 Complainant,)

6 vs.) Ref. No. 1260002283

7 EXCELSIOR MEDIA)

8 CORPORATION, a Nevada)

9 corporation; LIBERTY)

10 MEDIA HOLDINGS, LLC, a)

11 California limited)

12 liability company; and)

13 JASON GIBSON,)

14 individually,)

15 Respondents.)

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Arbitration Proceedings ~ Volume V ~ February 13, 2015
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Page 1107

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17 I N D E X

18 WITNESS PAGE

19 JOSEPH GARIN, ESQ.
 Direct Examination by Mr. White 1108
 20 Cross-Examination by Ms. Krincek 1163
 Redirect Examination by Mr. White 1212
 21 Recross-Examination by Ms. Krincek 1224

22 ELLEN R. PECK, ESQ.
 Direct Examination by Mr. White 1228
 23 Cross-Examination by Ms. Krincek 1279
 Redirect Examination by Mr. White 1338

24

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Arbitration Proceedings ~ Volume V ~ February 13, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 1244

1 of what Mr. Kennedy said was that the -- that
2 Mr. Randazza was indirectly violating the rule by
3 negotiating prior to the end of the negotiations
4 the ability to be employed by -- by the either
5 Youngtek Solutions Limited or TNAFlix after --
6 after the matter was settled.

7 He saw that that was an indirect
8 violation of Rule 5-100(A), and --

9 Q. Why do you disagree?

10 A. Well, first of all, the idea -- first of
11 all, I'm troubled with the logic of it, because
12 what Mr. Kennedy is saying is that you can't open
13 yourself up as a lawyer and be free to represent
14 other parties the way you are negotiating with
15 them, because, you know, that would be a violation
16 of the rule. But that in and of itself appears to
17 me logically to be a limitation on the right to
18 practice. So I -- so that part of the logic I
19 just don't understand.

20 But, secondly, and more -- more
21 importantly, California does not limit in any way
22 a lawyer's ability to take on a new -- a new
23 client, provided that there is no conflict of
24 interest between the current client's interests
25 and the new client, and doesn't prohibit the

Arbitration Proceedings ~ Volume V ~ February 13, 2015
Marc J. Randazza vs. Excelsior Media Corporation

Page 1245

1 negotiation for that or perceive -- there is
2 absolutely no authority for the idea that a lawyer
3 who negotiates for representation after the close
4 of a negotiation or lawsuit, and agrees to
5 represent the other -- the opposing party is, in
6 fact, a violation of our Rule 1-500(A).

7 Q. Let me ask you about a distinction that
8 you drew in your report. Is there a distinction
9 between making an agreement never to work for
10 people in the future, never to represent certain
11 people in the future on the one hand, and making
12 an agreement to represent somebody that will have
13 with it natural consequences in terms of ethics
14 and conflicts?

15 A. Yes, I do make that very distinction.
16 And that really is my quarrel with Mr. Kennedy in
17 that the rule plainly prohibits your negotiation
18 that you are not going to hold yourself out to
19 practice to anyone who is going to -- who is going
20 to bring cases against TNAflix, in this particular
21 example. The rule clearly prohibits that.

22 But our common law in California has
23 another provision that I don't believe the
24 American Bar Association has, and that is that
25 once you represent a current client, you have a